Law Office of Jack Silver

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Via Certified Mail –
Return Receipt Requested

June 27, 2016

Paul Willis, Public Works Director
Head of Agency
Town Hall
Town of Hillsborough
1600 Floribunda Ave.
Hillsborough, CA 94010

Kathy Leroux, City Manager
Members of the City Council
Town Hall
Town of Hillsborough
1600 Floribunda Ave
Hillsborough, CA 94010

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Willis, Head of Agency, Ms. Leroux, and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the Town of Hillsborough's sewer collection system.

River Watch hereby places the Town of Hillsborough ("the Town"), as owner and operator of its sewer collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Town for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the Town's sewer pipelines to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a polluter in violation of the CWA. River Watch alleges the Town violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A). Note that the Town, while a signatory to a NPDES permit governing the operation of the San Mateo Wastewater Treatment Plant for the treatment of its sanitary sewage, this permit does not cover discharges from the Town's collection system.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Town's operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the Town with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specified standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of sewage from the Town's sewer collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from June 27, 2011, to June 27, 2016, the Town has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Collection System Surface Discharges Caused By Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching the San Mateo Waste Water Treatment Plant and the Burlingame Waste Water Treatment Facility, are alleged to have occurred both on the dates identified in California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on the dates when no reports were filed by the Town, all in violation of the CWA.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **233,** with **5,350,329** "Total Vol of SSOs (gal)". Of this total volume, the Town claims **3,907,158,** or **73%** of the total, reached a surface water. However, a review of the records indicates a much greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Critically, of the **5,350,329** gallons of sewage spilled, only **1,398,878** gallons, or just **26%**, was recovered. The remainder was discharged into the environment where it posed both a nuisance pursuant to California Water Code Section 13050(m) and an imminent and substantial endangerment to health and the environment.

The below listed violations are reported by the RWQCB and evidenced in the CIWQS SSO Reporting Program Database Records:

43 - SSOs reported as reaching a water of the United States - CIWQS Event ID numbers: 780103, 811469, 821118, 780086, 788725, 789293, 780110, 821115, 788699, 811515, 778827, 789279, 821122, 789294, 789295, 821073, 771635, 788718, 821304, 788693, 819679, 821626, 793253, 789560, 778734, 804444, 814796, 805556, 782715, 788721, 796065, 776274, 797692, 786288, 822854, 776288, 792702, 789138, 800721, 802641, 802624, 772071, 804127.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. River Watch contends that these violations are continuing in nature or have a likelihood of occurring in the future.

Releases Reported. The Town's aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure resulting in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as San Mateo Creek, Cherry Creek and the San Francisco Bay – all waters of the United States.

A 2009 Cease and Desist Order ("CDO" R2-2009-0020) issued by the RWQCB mandated the Town develop a comprehensive plan to eliminate SSOs. In the course of investigating the causes of SSOs and options to eliminate further occurrences, the Town discovered the capacity of its sewer pipelines and collection system must be increased wherever possible to accommodate greater volumes of sewer flow that occur during wet weather. Many of its sewer pipelines are defective and must be replaced. Many sewer laterals are cracked, have been punctured by tree roots, and/or are otherwise degrading. The sewer laterals in their present condition allow excess water to flow into the collection system during wet weather conditions, and raw sewage to leak out during dry weather conditions. This raw sewage can contaminate the surrounding ground. Blockages can also cause sewer backups in homes. As an example, capacity problems in the sewer collection system in the Crystal Springs/El Cerrito Sewer Trunk were found to result in SSOs on the 700 block of El Cerrito every winter.

Based on these findings and in order to maintain compliance with the CDO, the Town implemented an initial 5-year, $25.5 million program to repair and/or replace defective sewer pipelines, while at the same time encouraging and incentivizing the voluntary repair or replacement of faulty sewer laterals by private property owners. Unfortunately, as of the writing of this Notice, the Town's sewer collection system continues to experience multiple SSOs every year causing thousands of gallons of untreated wastewater to flow from the overwhelmed collection system into San Mateo Creek and Cherry Creek, and from there into San Francisco Bay. For instance, as recently as January 19, 2016 a spill resulted in 26,700 gallons of untreated sewage to flow into San Mateo Creek. According to the Town's SSO Report for this event (Event ID# 821115), "this sewer main line is currently under reconstruction but has not made up to this location yet."

As recorded in CIWQS Public SSO Reports, the Town's sewer collection system has experienced at least **49** SSOs between June 27, 2011 and June 27, 2016, with a combined

volume of at least **1,265,190 gallons – 531,024 gallons** of which were reported as having reached surface waters. A few examples are identified below:

- December 2, 2012 (Event ID # 788725) - an overflow estimated at 57,600 gallons occurred at Crystal Springs Road near Crystal Springs Terrace as a result of flow exceeding capacity . According to the report, all 57,600 gallons discharged into San Mateo Creek.

- December 11, 2014 (Event ID# 811469) - an overflow, reported as "flow exceeded capacity," occurred at the same location with 65,850 gallons reaching San Mateo Creek.

- January 19, 2016 (Event ID# 821118) - an overflow occurred at a manhole located in the middle of the roadway across 135 Roblar Avenue. A total of 61,400 gallons were estimated as both the total amount of the spill and the amount to reach San Mateo Creek. The Town's SSO Report downplays the impacts to San Mateo Creek stating there was no creek access near the location of the SSO. However, discharges to storm water channels are discharges to waters of the United States.

While some spills occurred in areas which were dry at the time of the spill, the discharged pollutants remain on the surface of the land and enter receiving waters following rainfall or flooding.

This Notice also includes multiple violations that may have occurred on the same day but were reported by the Town to CIWQS as a single violation. Many of the Town's SSO Reports state "null" in response to Question 12 ("Number of appearance points") and Question 44 ("Explanation of Volume estimation used"). In addition, no water quality samples were taken for most of the 49 reported SSO violations, including Category 1 violations in excess of 50,000 gallons listed in CIWQS as Event ID #s: 821118, 811469, 788718, 788693, 780103, 780086, 779098, 778827 and 778727.

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the Town as having been contained without reaching a surface water did in fact discharge to surface waters; and those reported as partially reaching a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the SSO Reports filed by the Town state the estimated start time of the SSO as the same time as, or very soon after, the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The Town has reported multiple SSOs occurring from the same GPS location/address which indicates ongoing structural problems remain unrepaired. For instance, seven (7) SSOs took place at 777 El Cerrito Avenue (GPS location 37.5529 -122.33964) a manhole in the

shoulder of the roadway, from which more than 20,000 gallons of wastewater flowed through the street and into San Mateo Creek. At 1040 Crystal Springs Road (GPS location 37.54868 -122.3461) more than 215,000 gallons of wastewater flowed to San Mateo Creek from a manhole along the shoulder of the roadway during five (5) different SSOs.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. The majority of the Town's SSOs are estimated to have started within one and a half hours of the notification/operator arrival time,

River Watch believes many of these spills were far more significant than the Town's Reports disclose due to the unlikely time estimations. For example, the SSO Report from a spill event on January 19, 2016 (Event ID # 821122) lists the estimated start time at 10:00 a.m., agency notification and operator arrival both at 10:10 a.m., and spill end time as 12:15 p.m. Very little detail is given in the Town's report on this spill. The total volume is estimated at only 8,100 gallons, with none recovered, and 8,100 gallons are reported as affecting San Mateo Creek. In describing a spill at 1040 Crystal Springs Road in Hillsborough on December 2, 2012 (Event ID # 788725) the Town's SSO Report identifies the estimated SSO start time as 10:00 a.m.,the notification and operator arrival times at 10:35 a.m., and the spill end time as 4:00 p.m. The Town estimated a total volume of 57,600 gallons, none of which was reported as recovered, and all of which spilled into the storm drain system, into San Mateo Creek, and out to San Francisco Bay. River Watch contends the Town is grossly underestimating the incidences and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the Town fails to adequately mitigate the impacts of SSOs. The Town is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the Impacts of a SSO. The EPA's "*Report to Congress on the Impacts of SSOs*" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within areas of the Town's SSOs. Neighboring waterways include sensitive areas such as Golden Gate National Recreation Area (Southside), Milagra Ridge, Mori Point, Sweeney Ridge and Phleger Estate, the San Francisco Peninsula Watershed, San Francisco Bay and Seal Slough Watershed. There is no record of the Town performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the Town to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the Town is severely underestimating SSOs which reach surface waters, River Watch contends the Town is sampling very few violations of their reported SSOs.

Compliance with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit. River Watch contends the Town fails to adequately comply with the discharge prohibitions in the MS4 permit (Order No. R2-2009-0074; NPDES Permit No. CAS612008) which states, in Section A. Discharge Prohibitions, Subsection A.1: "The permittee, shall, within their respective jurisdictions, effectively prohibit the discharge of non-stormwater (materials other than stormwater) into, storm drain systems and watercourses. NPDES-permitted discharges are exempt from this prohibition. Provision C.15 describes a tiered categorization of non-stormwater discharges based on potential for pollutant content that may be discharged upon adequate assurance that the discharge contains no pollutants of concern at concentrations that will impact beneficial uses or cause exceedances of water quality standards."

In practice, the discharge of any SSO to any storm drain system or watercourse under the Town's jurisdiction violates this subsection of the Town's MS4 NPDES permit.

B. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is also a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., of the Town's sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to, tributaries of San Francisco Bay such as San Mateo Creek and Cherry Creek. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.[1]

[1] *See* the Report of Human Marker Study issued in July of 2008 and conducted by Dr Michael L. Johnson, U.C. Davis water quality expert, performed for the Town of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

Evidence of exfiltration can also be supported by reviewing mass balance data, "inflow and infiltration" ("I/I") data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the Town is a violation of the NPDES permit and thus the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the Town's sewer collection system to determine the location and extent of exfiltration.

C. Impacts to Beneficial Uses

San Francisco Bay has many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching these waters cause prohibited pollution by unreasonably affecting their beneficial uses.

San Francisco Bay supports 50 species of mammals, 33 reptiles, over 250 species of birds and 94 various species of fish, including endangered species such as the Mountain Beaver, Salt Marsh Harvest Mouse, San Joaquin Kit Fox, Southern Sea Otter, Humpback Whale, California Brown Pelican, Marbled Murrelet, California Clapper Rail, California Least Tern, Northern Spotted Owl, Peregrine Falcon, Western Snowy Plover, Alameda Striped Racer, Blainville's Horned Lizard, Pacific Pond Turtle, San Francisco Garter Snake, California Tiger Salamander, Red-legged frog, Delta Smelt, Steelhead Trout, Coho Salmon, Tidewater Goby, Ahlen Tiger Beetle, Mt. Germon Beetle, Delta Ground Beetle, Exeunt Band-Winged Grasshopper, San Francisco Lacewing, San Bruno Elfin Butterfly, Bay Checkerspot Butterfly, Callippe Silverspot Butterfly, Myrtle's Silverspot Butterfly, Lange's Metalmark Butterfly, Mission Blue Butterfly, Smith's Blue Butterfly, California Freshwater Shrimp, and the Black Abalone.

San Mateo Creek and Cherry Creek drain the mostly wooded slopes of the Town. The upper watersheds are closed-canopy California oak woodlands with dominant trees of Coast Live Oak, Pacific Madrone and California Bay. The upper drainage area of San Mateo Creek contains significant serpentine outcrops which are known habitats for several rare plant species including the San Mateo wooly sunflower. Other common plants include toyon gooseberry, lupine, monkeyflower and coffeeberry. Commonly observed mammals in the area include California mule deer, raccoons, possums, coyotes, rabbits, squirrels and skunks.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the diverse and sensitive ecosystem of the Town of Hillsborough.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entity responsible for the alleged violations identified in this Notice is the Town of Hillsborough and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violation.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the Town which relate to its sewer collection system as further described in this Notice.

The Town of Hillsborough is a residential community located in San Mateo County, California, west of Highway 101 and El Camino Real, east of Highway 280, within a short commute to San Francisco and minutes from the San Francisco International Airport. It is one of the wealthiest communities in America and has the highest income of places in the United States with a population of at least 10,000. Compared to the rest of the country, Hillsborough's cost of living is 618% higher than the United States average. The Town encompasses an area of approximately 6 square miles and hosts a population of approximately 11,273 (as of 2013).

The Town is a single family residential community with just five (5) commercial businesses (3 private schools, a racket club and a private golf course). The Town's zoning and subdivision ordinances require a 2,500 square foot minimum house size and a minimum lot size of 0.5 acres. There are no apartments, condominiums or townhouses within city limits. The median price of homes sold in 2013 was $3.4 million.

The Town's sewer collection system consists primarily of the Burlingame Sewer Basin and San Mateo Sewer Basin. Wastewater from the Burlingame Basin flows north into the Burlingame Waste Water Treatment Facility. Wastewater from the San Mateo Basin flows south into the San Mateo Waste Water Treatment Plant. The Town has divided the two sewer drainage basins into 108 mini-basins which identify small areas of the sewer collection system designed to be efficiently and effectively cleaned within a few days. The Town holds approximately 3,915 sewer accounts, 46% of which (1,800) are in the Burlingame Sewer Basin, with the remaining (54%) in the San Mateo Sewer Basin.

The sewer collection system consists of approximately 116 miles of gravity sanitary sewer lines, 1.1 miles of forced mains, 2,565 manholes, and 4 sewer pump stations. Sewer pipe sizes range from 4 to 28 inches in diameter and are predominately made of vitrified clay pipe. Nearly two-thirds sewer collection system was built prior to 1940. Forty-two percent of the sewer collection system lies within easement areas. The Town operates a "Smartcover

Alarm" system which notifies the Public Works Department when the flow starts to rise. This system, unfortunately, has not allowed the Public Works Department to mitigate the negative effects of frequent overflows.

Nearly all of the sewer collection system is gravity fed. Approximately one-half mile of the system is comprised of forced mains serviced by 4 sanitary sewer pump lift stations constructed between 1976 and 2002. The Hayne and La Honda stations are located in central Hillsborough; the Brooke Court and Sugar Hills stations are located in southern Hillsborough. The location of the pump station allows them to assist in the conveyance of wastewater to a gravity point from which it flows downhill to either the San Mateo or Burlingame treatment plants. All pump stations are set to automatically alternate and adjust based on flow. Wet well operations are set to limit pump starts and stops and in-line storage of wet weather flows occurs automatically. Each pump location has a backup generator monitored by the Town's SCADA system 24 hours a day, in the event of power outages which occur approximately 8 times annually.

In addition to the pump stations, the Town owns and maintains 2 sewer ejector systems located at the Hillsborough Police Station and the Public Works Corporation Yard. Both are for single facilities and are managed and maintained in the same manner as the pump stations.

5. *The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is June 27, 2011 through June 27, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the Town which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
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138 Ridgeway Avenue
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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with Town staff to tailor remedial measures to the specific operation of the Town's sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective, could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including: age, composition and PACP rating of the sewer line in question; the nature of the defect; soil types; groundwater patterns; and the like.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP

assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect.

II. REMEDIAL MEASURES

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the Town's sewer collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective (PACP 5 or 4) or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the Town will:

   i. Repair or replace all sewer lines found to be Significantly Defective;

   ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the Town's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the Town determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the discharger shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the Town shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.

5. Provision in the Town's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the Town's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

   i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered.

   ii. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

   iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Pursuant to the Town's legal obligation under SWRCB Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements For Sanitary Sewer Systems*, Section D.7.v., the Town shall have a qualified biologist develop and implement an adequate sampling program to determine the nature and impact of all SSOs.

3. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from the Town's website to the CIWQS SSO Public Reports. Notification shall be given by the Town to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

   i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

   ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

   iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

   iv. Upon replacement or repair.of any part of the sewer lateral;

   v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or

   vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks and/or the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Town's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Town to contact River Watch within **20 days** after receipt of this Notice Letter to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

Service List

Administrator
U.S. Environmental Protection Agency
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